

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE CHARLES SCHWAB CORPORATION,

Plaintiff,

No. C 10-04523 JSW

v.

**ORDER GRANTING MOTION TO
REMAND**

J.P. MORGAN SECURITIES INC., f/k/a
BEAR, STEARNS & CO, et al.,

Defendants.

INTRODUCTION

Now before the Court for consideration is the Motion to Remand filed by Plaintiff, The Charles Schwab Corporation (“Schwab Corporation”). The Court has considered the parties’ papers, relevant legal authority, and the record in this case. For the reasons set forth in the remainder of this Order, the Court HEREBY GRANTS Schwab Corporation’s motion.

BACKGROUND

On September 2, 2010, Schwab Corporation filed a complaint in the San Francisco County Superior Court.¹ (Notice of Removal, Ex. B (Complaint).) In its Complaint, Schwab

¹ Schwab Corporation filed three other cases in San Francisco Superior Court, in which it asserted claims that are similar to the claims raised in this case, each of which were removed to this Court. *See The Charles Schwab Corporation v. BNP Paribas Securities, et al.*, No. 10-CV-4030-SI (“BNP Paribas”); *The Charles Schwab Corporation v. Banc of America Securities, LLC, et al.*, No. 10-CV-3489-LHK (“Banc of America”); *The Charles Schwab Corporation v. J.P. Morgan Securities, Inc., et al.*, No. 10-CV-4522-JSW (“JP Morgan I”). Judge Illston and Judge Koh have remanded the *BNP Paribas* and the *Banc of America* cases to San Francisco Superior Court. *See The Charles Schwab Corporation v. Banc of America Securities, LLC*, 2011 WL 864978 (N.D. Cal. Mar. 11, 2011); *The Charles Schwab Corporation v. BNP Paribas Securities*, 2011 WL 724696 (N.D. Cal. Feb. 23, 2011).

Corporation alleged that it invested \$486 million in 11 certificates in 11 securitization trusts backed by residential mortgage loans (the “Certificates”). (Compl. ¶ 1.) Schwab Corporation alleged that the Defendants, J.P. Morgan Securities, Inc. f/k/a Bear Stearns & Co., Inc., Bear Stearns Asset Backed Securities I LLC, Chase Mortgage Finance Corporation, J.P. Morgan Acceptance Corporation I, and J.P. Morgan Securities Holdings, LLC (collectively “Defendants”), made materially misleading statements regarding the Certificates and the credit quality of the mortgage loans that backed the Certificates. Schwab also alleged that the Defendants omitted material information relating to the Certificates. (*Id.* ¶¶ 1-2; *see also id.* ¶¶ 38-109.) Schwab Corporation also alleged that the Defendants either sold or issued the Certificates to Charles Schwab Bank, N.A. (“Schwab Bank”), a wholly owned subsidiary of Schwab Corporation. According to Schwab Corporation, on June 29, 2010, Schwab Bank “assigned all of its right, title, and interest in the claims raised in this Complaint” to Schwab Corporation. (*Id.*, ¶¶ 1, 13-14, Ex. A.)

Based on these allegations, Schwab Corporation asserted claims against Defendants for: (1) violations of California Corporations Code §§ 25401, 25501; (2) violations of Sections 11 of the Securities Act of 1933 (“Securities Act”); (3) violations of Section 12(a)(2) of the Securities Act; (4) violations of Section 15 of the Securities Act; (5) negligent misrepresentation; and (6) a right to contract rescission pursuant to California Civil Code §§ 1689, 1710, and the common law.

Schwab Corporation served the Defendants on or about September 10, 2010. (Notice of Removal, ¶ 4, Ex. A.) On October 6, 2010, Defendants removed to this Court. Defendants asserted that this Court has original jurisdiction because Schwab Corporation’s claims are “related to” bankruptcy proceedings involving Aegis Mortgage Corporation (“Aegis Mortgage”), American Home Mortgage Holdings, Inc. (“AHM”), First Magnus Financial Corporation (“First Magnus”), First NLC Financial Services, LLC (“First NLC”), HomeBanc Mortgage Corporation (“HomeBanc Mortgage”), Lancaster Mortgage Bankers, LLC

1 (“Lancaster Mortgage”), and 1st Republic Mortgage Bankers, Inc. (“1st Republic”).² These
 2 entities allegedly originated some of the loans backing the Certificates at issue in this case.
 3 (Notice of Removal, ¶¶ 11-25.) Defendants also asserted that the case was removable on the
 4 basis of diversity jurisdiction. (*Id.* ¶¶ 26-36.)

5 Schwab Corporation now moves to remand on the basis that there is no diversity
 6 jurisdiction, that this action is not “related to” bankruptcy proceedings, and on equitable
 7 grounds.³

8 ANALYSIS

9 A. Legal Standards Applicable to Removal Jurisdiction.

10 “[A]ny civil action brought in a State court of which the district courts of the United
 11 States have original jurisdiction, may be removed by the defendant ... to the district court of the
 12 United States for the district and division embracing the place where such action is pending.”
 13 *Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern*
 14 *California*, 463 U.S. 1, 7-8 (1983) (citation omitted). *See also* 28 U.S.C. § 1441. However,
 15 federal courts are courts of limited jurisdiction. Accordingly, the burden of establishing federal
 16 jurisdiction for purposes of removal is on the party seeking removal, and the removal statute is
 17 strictly construed against removal jurisdiction. *Prize Frize Inc. v. Matrix Inc.*, 167 F.3d 1261,
 18 1265 (9th Cir. 1999); *see also Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004),
 19 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

20 B. Diversity Jurisdiction.

21 Defendants removed, in part, on the basis of diversity jurisdiction. A defendant may
 22 remove an action on the basis of diversity jurisdiction, only if no defendant is a citizen of the
 23 same state as any plaintiff and “only if none of the parties in interest properly joined and served
 24 as defendants is a citizen of the State in which the action is brought.” 28 U.S.C. § 1441(b); *see*

25 ² The Court shall refer collectively to each of these entities, as well as other
 26 bankrupt entities identified by Defendants as having originated loans backing the
 27 Certificates, as “Bankrupt Originators.”

28 ³ In its opening brief, Schwab Corporation also argued that removal was
 improper under Section 22(a) of the Securities Act, but it withdrew that argument on reply.
 (*See* Reply Br. at 2 n.1.)

1 also 28 U.S.C. 1332(a)(1). In this case, it is undisputed that Schwab Corporation and the
2 Defendants are not diverse, because they each are citizens of Delaware. (*See* Compl. ¶ 5;
3 Notice of Removal ¶¶ 31-35.) Defendants argue, however, that the assignment from Schwab
4 Bank, a citizen of Nevada, to Schwab Corporation was a collusive assignment and should be
5 disregarded for purposes of determining the citizenship of the parties. Although 28 U.S.C. §
6 1359 prohibits collusive assignments to create diversity jurisdiction, there is no similar statute
7 prohibiting collusive assignments in order to defeat jurisdiction.

8 In *Banc of America*, Judge Koh considered, and rejected, similar arguments about the
9 assignment at issue in this case. (*Compare The Charles Schwab Corporation v. Banc of*
10 *America Securities, LLC*, No. 10-CV-3489, Docket No. 19 (Declaration of Anne Hayes
11 Hartman, Ex. A) *with The Charles Schwab Corporation v. J.P. Morgan Securities, LLC*, No.
12 10-CV-4523, Docket No. 14 (Declaration of Anne Hayes Hartman, Ex. A).) In her thoughtful
13 and well reasoned opinion, Judge Koh noted that the assignment between did bear “some
14 hallmarks” of a collusive assignment but ultimately concluded that Schwab Bank had
15 completely assigned its claims to Schwab Corporation. *Banc of America*, 2011 WL 864978, at
16 *3-4. Judge Koh also refused to impose a burden upon Schwab Corporation to prove that the
17 assignment was not collusive, because the defendants had removed the case and, as such, had
18 the burden of establishing jurisdiction. *Id.*

19 In this case, Schwab Bank and Schwab Corporation executed the assignment on June 29,
20 2010, the day Schwab Corporation filed the first of its four complaints but two months before
21 this Complaint was filed. In all other respects, however, the assignment at issue in this case is
22 identical to the assignment at issue in *Banc of America*. The Court finds Judge Koh’s reasoning
23 in the *Banc of America* case persuasive and equally applicable to the facts of this case.
24 Accordingly, for the reasons articulated by Judge Koh in the *Banc of America* case, this Court
25 concludes that Defendants have not shown the assignment should be disregarded. The parties
26 are not completely diverse. Thus, the case was not removable on that basis. *See Banc of*
27 *America*, 2011 WL 864978, at *2-4.

1 **C. “Related To” Jurisdiction.**

2 Defendants also argue that this Court has jurisdiction pursuant to 28 U.S.C. § 1334,
3 which provides, *inter alia*, that subject to exceptions not present in this case, “the district courts
4 shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11,
5 or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). To determine whether a
6 civil action is “related to” bankruptcy proceedings, the Ninth Circuit has adopted the
7 “conceivable effects” test.

8 The usual articulation of the test for determining whether a civil proceeding
9 is related to bankruptcy is whether *the outcome of the proceeding could*
10 *conceivably have any effect on the estate being administered in bankruptcy.*
11 [Citations omitted in original.] Thus, the proceeding need not necessarily be
12 against the debtor or against the debtor’s property. An action is related to
13 bankruptcy if the outcome could alter the debtor’s rights, liabilities, options,
14 or freedom of action (either positively or negatively) and which in any way
15 impacts upon the handling and administration of the bankrupt estate.

13 *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984,
14 994 (3rd Cir. 1984)).

15 If, however, a bankruptcy plan has been confirmed, then “related to” jurisdiction is
16 limited to cases that present a “close nexus” to the bankruptcy plan. In such a case, matters that
17 affect “the interpretation, implementation, consummation, execution, or administration of the
18 confirmed plan will typically have the requisite close nexus.” *Montana v. Goldin (In re*
19 *Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005) (quoting and adopting *In re Resorts*
20 *Int’l, Inc.*, 372 F.3d 154, 166-67 (3rd Cir. 2004)).

21 According to Defendants, Bankrupt Originators originated approximately 598 loans in
22 three of the eleven Certificates at issue this case. (Declaration of Jason de Bretteville (“de
23 Bretteville Decl.”), ¶¶ 2-5.) Defendants put forth evidence that they have indemnification
24 agreements with those entities. (*Id.*, ¶¶ 25-27, Exs. 6-18.) A number of courts, within this
25 district and around the country, have concluded that the right to indemnification satisfies the
26 conceivable effects test. *See, e.g., Banc of America*, 2011 WL 864978, at *6; *Federal Home*
27 *Loan Bank of San Francisco v. Deutsche Bank Sec., Inc.*, 2010 WL 5394742, at *3 (N.D. Cal.
28 Dec. 20, 2010) (citing cases); *Federal Home Loan Bank of Seattle v. Deutsche Bank Sec., Inc.*,

736 F. Supp. 2d 1283, 1289-90 (W.D. Wash. 2010). In the *Banc of America* case, Judge Koh also concluded that the right to indemnification from AHM, whose bankruptcy plan has been confirmed, would satisfy the “close nexus” test. *Banc of America*, 2011 WL 864978, at *5; *see also BNP Paribas*, 2011 WL 724696, at *2 (“even assuming” defendant could satisfy close nexus test, finding that remand was warranted on equitable grounds).

The Court finds these cases persuasive and for the reasons set forth therein, the Court concludes that Defendants have shown that they have satisfied the “conceivable effects” test with respect to Bankrupt Originators other than AHM and First Magnus. Nonetheless, the Court concludes that equitable considerations favor remand. In addition, assuming *arguendo*, that Defendants could satisfy the close nexus test as to claims pertaining to loans originated by AHM and First Magnus, whose plans have been confirmed, the Court also concludes that equitable considerations favor remand.

D. Equitable Remand.

Under 28 U.S.C. § 1452(b), the Court may remand an action removed from state court pursuant to § 1452(a) on “any equitable ground.” *In re McCarthy*, 230 B.R. 414, 417 (9th Cir. BAP 1999) (quoting 28 U.S.C. § 1452(b)). “This ‘any equitable ground’ remand standard is an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes.” *Id.*

Courts in the Ninth Circuit generally consider seven factors to determine whether to remand a “related to” case on equitable grounds:

(1) the effect of the action on the administration of the bankruptcy estate; (2) the extent to which issues of state law predominate; (3) the difficulty of applicable state law; (4) comity; (5) the relatedness of the action to the bankruptcy case; (6) any jury trial right; and (7) prejudice to plaintiffs from removal.

Hopkins v. Plant Insulation Co., 349 B.R. 805, 813 (N.D. Cal. 2006) (citing *Williams v. Shell Oil Co.*, 169 B.R. 684, 692-93 (S.D. Cal. 1994)); *see also Banc of America*, 2011 WL 724696, at *7-8 (applying factors to grant motion to remand); *BNP Paribas*, 2011 WL 724696, at *3-4 (same).

Applying these factors to this case, the Court concludes that remand is warranted.⁴ As noted above, Bankrupt Originators originated approximately 598 loans with respect to three of the eleven Certificates at issue. However, according to the Complaint, the eleven Certificates are backed by approximately 26,000 loans. (Compl. ¶ 22.) Moreover, Defendants have not explained how their claims will be treated under the First Magnus and AHM confirmation plans. Therefore, for the reasons articulated by Judge Koh, Judge Illston, and Judge Conti, the Court finds that the likely overall effect of this litigation on the various bankruptcy proceedings is minimal. *See Banc of America*, 2011 WL 724696, at *7; *BNP Paribas*, 2011 WL 724696, at *3; *Federal Home Loan Bank of San Francisco*, 2010 WL 5394742, at *11-13. As such, the Court concludes that the first and fifth factors weigh in favor of remand.

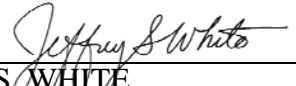
With regard to the second and third factors, Schwab Corporation brings both federal and state law claims and, thus, neither state law nor federal law predominates. However, as Judge Illston noted in the *BNP Paribas* case, “claims under the Securities Act first filed in state court are normally not removable.” *BNP Paribas*, 2011 WL 724696, at *3. Further, Judge Koh and Judge Illston have remanded their cases, and the Court concludes that *J.P. Morgan I* also should be remanded. Therefore, the Court finds that the fourth and seventh factors also weigh in favor of remand.

CONCLUSION

For the foregoing reasons, Schwab Corporation’s motion to remand is GRANTED. The Clerk shall remand this case to the San Francisco Superior Court and close the file.

IT IS SO ORDERED.

Dated: May 2, 2011


 JEFFREY S. WHITE
 UNITED STATES DISTRICT JUDGE

⁴ The sixth factor appears to be neutral.